

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

KENNETH R. RUSSELL, JR.,

Petitioner,

-vs-

JOE ALLBAUGH,

Respondent.

Case No. CIV-18-0379-F

**ORDER**

Petitioner Kenneth R. Russell, Jr., seeks habeas relief under 28 U.S.C. § 2254. Petitioner appears *pro se* and his pleadings are liberally construed.

On July 31, 2018, Magistrate Judge Charles B. Goodwin entered a Report and Recommendation (the Report, doc. no. 6), recommending the court dismiss the petition without prejudice, as untimely.


Petitioner objects to the Report, arguing that dismissal, in these circumstances, is fundamentally unfair and making other arguments. Doc. no. 7.

As required by 28 U.S.C. §636(b)(1), the court has reviewed the Report in its entirety and has reviewed all objected to matters *de novo*. The Report addresses, in detail, the reasons for the magistrate judge's conclusions that the petition should be dismissed as untimely. After careful consideration of petitioner's objections, the court finds that nothing stated there changes the court's conclusion, in agreement with the magistrate judge, that the petition is untimely. The Report's analysis is correct and will be adopted. Furthermore, given the Report's detailed analysis, there is no need for further discussion of any issues here.

Petitioner's objections to the Report are **DENIED**. Doc. no. 7. The Report and Recommendation of the Magistrate Judge (doc. no. 6) is **ACCEPTED**, **ADOPTED** and **AFFIRMED**. In accordance with the Report, this action seeking a writ of habeas corpus pursuant to 28 U.S.S. § 2254 is **DISMISSED** without prejudice, as untimely.

Movant is entitled to a certificate of appealability only upon making a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). This standard is satisfied by demonstrating that the issues movant seeks to raise are deserving of further proceedings, debatable among jurists of reasons, or subject to different resolution on appeal. *See, Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (“[W]e give the language found in §2253(c) the meaning ascribed it in [*Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)], with due note for the substitution of the word ‘constitutional.’”). “Where a district court has rejected the constitutional claims on the merits,...[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* When a prisoner’s habeas petition is dismissed on procedural grounds without reaching the merits of the prisoner’s claims, “a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* Petitioner has not made the requisite showing and a certificate of appealability is **DENIED**.

IT IS SO ORDERED this 28<sup>th</sup> day of August, 2018.

  
STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE